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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,659	10/25/2001	Pamela A. Kramer	ACS-54306(22571)	6167

24201 7590 06/01/2005

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EXAMINER

HO, UYEN T

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/032,659

Applicant(s)

KRAMER ET AL.

Examiner

(Jackie) Tan-Uyen T. Ho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,14-16,22-24,26-29 and 41-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,14-16,22-24,26-29 and 41-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/20/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see Remarks, filed 3/14/05, have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Alt (5,855,600) in view of Ishibashi et al. (6,767,416).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-10, 14-16, 22-24, 26-29, 41-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (5,855,600). Alt disclose a flexible stent being made from alloy, stainless steel, titanium alloy, tantalum, titanium, platinum and iridium and the thickness of the strut is from 65-100 microns (which is in the range of the thickness of the struts as claimed in claims 15, 16, 42, 43). It is known in the art that the alloy with smaller grain size will have more strength and corrosion resistant (Support for the well known statement, Ishibashi et al. (6,767,416) teach making the corrosion resistant, high strength alloy with a fine-grained material having an average grain size of nano-size). It is also known in the art that alloy with less thickness and high strength and corrosion resistant is desired for making stent, a support structure in a vascular system.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Alt's stent from alloy that have small grain size in order to provide the stent with corrosion resistant and high strength and it would have been obvious matter of design choice to modify the stent of Alt to have such grain size as claimed, since applicants have not disclosed having such grain size as claimed solves any stated problem or for any particular purpose other than to provide strength, it appear that the stent of Alt in view of well known alloy material with nano grain size in the art as taught by Ishibashi et al. would perform equally well with the grain size of 1-10 micron since both stents having the same thickness. Note: Change in dimension, degree, size, ect. without special functional significance are not patentable. Research Corp. v. Nasco Industries, Inc., 501 F2d 358; 182 USPQ 449 (CA 7), cert. denied 184 USPQ 193; USLW 3359 (1974), In re Rose, 105 USPQ 137, and In re Aller et al., 105 USPQ 233.

In regard to other alloy that is not disclosed by Alt, those alloy as claimed are well known in the art to make stent, examiner considers those alloy are the variant species. Therefore, it would have been obvious to one having ordinary skill in the art to substitute one material for another within the same art that would perform equally well in the Alt's stent.

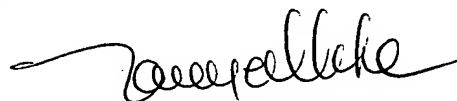
Note: To substitute a well known material based on its suitability for the intended use without special functional significance are not patentable, in re Hotchkiss v. Greenwood, 52 USPQ 248.

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is 571-272-4696. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANHTUAN NGUYEN can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



(Jackie) Tan-Uyen T. Ho
Patent Examiner
Art Unit 3731

May 26, 2005